DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
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> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 27-34, 36-50, and 52-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Lardo (Patent Application Publication No. 2002/0095197). Lardo et al disclose an arrangement for treating cardiac arrhythmia comprising a fluid delivery system (4) structured to systemically or locally introduce a fluid to a target area of a heart and an energy source (3) adapted to transmit energy in the form of light to at least one portion of the target area. The fluid delivery system is structured such that it is capable of introducing a fluid to a target area of a heart where a volume of the target area which receives the fluid is less than a volume of the heart and where the target area has a predetermined metabolism. The fluid delivery system is also structured such that it is capable of providing the fluid to be received only by those areas of the heart having a metabolism which is greater than or equal to the predetermined metabolism, without being received by those areas of the heart having a metabolism less than the predetermined metabolism. In paragraph [0028], Lardo et al teach using a photodynamic or photosensitizing compound. In paragraph [0027], Lardo et al teach activation of the compound causes damage to those cells in which the compound has been localized. In paragraph [0033], Lardo et al teach the energy source may be used

to determine electrical activity within the heart. In paragraph [0037], Lardo et al teach that the energy source is provided to activate the fluid to destroy at least one of a plurality of cells and a tissue within the target area. In paragraph [0037], Lardo et al disclose the fluid being a photodynamic fluid capable of absorbing energy in the form of light where the light is provided in a frequency range between approximately 350 nm and 700 nm.

3. Claims 27-34, 36-50, and 52-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Pless (U.S. Patent No. 6,811,562). In lines 47-59 of column 9, Pless discloses an arrangement for treating cardiac arrhythmia comprising a fluid delivery system structured to systemically or locally introduce a fluid to a target area of a heart and an energy source (300) adapted to transmit energy in the form of light to at least one portion of the target area. The fluid delivery system is structured such that it is capable of introducing a fluid to a target area of a heart where a volume of the target area which receives the fluid is less than a volume of the heart and where the target area has a predetermined metabolism. The fluid delivery system is also structured such that it is capable of providing the fluid to be received only by those areas of the heart having a metabolism which is greater than or equal to the predetermined metabolism, without being received by those areas of the heart having a metabolism less than the predetermined metabolism. In lines 1-18 of column 9, Pless teaches using a photodynamic or photosensitizing compound and teaches that activation of the compound causes damage to those cells in which the compound has been localized. In lines 47-60 of column 2, Pless teaches energy source may be used to determine

electrical activity within the heart. In lines 19-31 of column 9, Pless teaches that the energy source is provided to activate the fluid to destroy at least one of a plurality of cells and a tissue within the target area. In line 65 of column 8 to line 18 of column 9 and in lines 24-43 of column 10, Pless discloses the fluid being a photodynamic fluid capable of absorbing energy in the form of light where the light is provided in a frequency range between approximately 350 nm and 700 nm.

Response to Arguments

4. Applicant's arguments with respect to claims 27-34, 36-50, and 52-55 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument filed March 14 2008 that Lardo et al and Pless do not disclose a fluid delivery system structured to introduce a fluid to a target area in which the target area has a predetermined metabolism and where the fluid delivery system is structured such that the fluid is provided to be received only by those areas of the heart having a metabolism which is greater than or equal to the predetermined metabolism, without being received by those areas of the heart having a metabolism less than the predetermined metabolism, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Both Lardo et al and Pless disclose the claimed structural limitations, and, therefore, are seen as being capable of performing the intended use which is

recited in the claims. There are no structural differences between the claimed invention and the prior art, thus demonstrating that if the claimed invention can perform the intended use as recited in the claims, then the prior art is also capable of performing the same intended use. Applicant's arguments on pages 12 and 13 have been considered but are not deemed persuasive. Lardo et al and Pless do disclose the claimed invention as the fluid delivery systems of Lardo et al and Pless are structured to meet the claimed limitations. Applicant's arguments regarding the "clear structural difference between the claimed invention and the prior art" are unclear as there is no structural differences in terms of structural elements between the claimed invention, specifically the claimed fluid delivery system, and the inventions disclosed in the prior art of Lardo et al and Pless.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BHISMA MEHTA whose telephone number is (571)272-3383. The examiner can normally be reached on Monday through Friday, 7:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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